

United States District Court Southern District of Texas

Case Number: 05CV1847

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 10 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 Q. Okay.

2 MS. ALCALA: I'm going to tender to
3 Defense Counsel what I've previously showed them
4 an exhibit marked -- these are all of the
5 records.

6 Q. Did you flip through them?

7 A. Yes.

8 Q. I'll staple them so we can keep them
9 together. I think you gave them to me paper
10 clipped; right?

11 A. Yes.

12 MS. ALCALA: I'm going to tender to
13 Defense Counsel State's Exhibit No. 9, offer it
14 into evidence. That would also be with the same
15 understanding as the other records, court's
16 previous ruling.

17 THE COURT: Right.

18 MR. HILL: No objection.

19 THE COURT: Be admitted.

20 BY MS. ALCALA:

21 Q. When did his money run out?

22 A. His last purchase was January 31st.

23 Q. Of 199--?

24 A. 1994.

25 Q. So he hasn't bought anything since

1 January, 1994?

2 A. Our records show he has not bought
3 anything.

4 Q. What is his current balance as of
5 January 31, 1994?

6 A. Negative five dollars and seventy-six
7 cents.

8 Q. So he doesn't have any money to buy
9 anything?

10 A. He does not.

11 MS. ALCALA: I'll pass the witness.

12

13 CROSS EXAMINATION

14 BY MR. HILL:

15 Q. Is that negative of five dollars and
16 seventy-five cents, or whatever it was, mean
17 that he owes money to his commissary account?

18 A. He owes money to someone in the
19 system. It does not mean necessarily
20 commissary. If he does not have any money, we
21 don't give him anything.

22 Q. Who could he owe the money to in the
23 system if not to the commissary account?

24 A. To the medical department.

25 Q. Because people that are held in the

1 medical wing are required under the Harris
2 County sheriff's department rules to pay for
3 their own medication; correct?

4 A. Yes, they are. To my knowledge, they
5 are.

6 Q. So if a person needs medication and
7 they're in the Harris County jail they have to
8 pay for it themselves out of their commissary
9 account?

10 A. This is an inmate trust fund.

11 Q. I am sorry. They have to pay for it
12 out of their inmate trust fund?

13 A. Yes, they do.

14 Q. How often can they access their inmate
15 trust fund? Are there special days of the week
16 where they can make requisitions or requests?

17 A. As far as commissary, there are. They
18 can make one purchase a week.

19 Q. What about other needs that the person
20 has that while they're confined in the jail,
21 such as medical prescriptions?

22 A. I can't testify to that. I mean, I
23 don't work for the medical department.

24 Q. Would the request for a debit to the
25 inmate's trust account be made through your

1 office?

2 A. No, they would not. Would be made
3 through the bank.

4 Q. And the bank is physically located
5 somewhere within the jail?

6 A. Yes, sir.

7 Q. It's a computer terminal that tracks
8 it?

9 A. Yes.

10 Q. I am sorry, I didn't mean to
11 interrupt. Go ahead and complete your answer.

12 A. They have different locations in the
13 jail. Each jail has its own banking locations.

14 Q. Okay. Now the records that have been
15 introduced into evidence in this case are
16 actually the computer generated records that
17 summarize the transactions; correct?

18 A. Summarize the transactions through
19 commissary.

20 Q. Right. Actually there is like a
21 written slip of paper that a person has to fill
22 out before that particular document is
23 generated?

24 A. Yes, there is.

25 Q. What happens to those pieces of paper

1 after they're turned into the bank or to the
2 commissary person?

3 A. The written pieces of paper that are
4 the actual order form?

5 Q. Yes, ma'am.

6 A. Is destroyed after certain amount of
7 time.

8 Q. Okay. Is that order form prepared in
9 the person's own handwriting, or could somebody
10 else make an order as long as the inmate signs
11 your particular form when they come to receive
12 the items?

13 A. I suppose they could. I can't say
14 that they do because I haven't actually
15 witnessed them do it.

16 Q. Okay. Now, are you actually the
17 individual in the jail that an inmate would come
18 to to, let's say, purchase an item? We kind of
19 characterized it as convenient store. Are you
20 the clerk of the convenience store?

21 A. If I may explain how it works.

22 Q. Right, please do.

23 A. We send out two forms. We send out a
24 price sheet of everything we have in the
25 commissary that gives an item number, a price

1 and a description of each item that we sell.
2 They are supplied with that, they are supplied
3 with an order form. On that order form, they
4 have to write the price of the item number, the
5 quantity, the description and the price of the
6 item, and I have to have that all added up by
7 their quantities, has to be in order as they see
8 it on their order form.

9 Q. Okay. And then that person brings it
10 to some store?

11 A. Then that person turns that form in to
12 a deputy, and we pick them up from the floors
13 the night before the order is suppose to be
14 filled. They fill these the night before.

15 Q. So the only time the actual individual
16 receiving the items depicted on State's Exhibit
17 No. 9 would appear in front of somebody is when
18 they're signing this original of that document
19 which is computer generated like a sales slip or
20 receipt; right?

21 A. That is true. They have to sign, they
22 have to show us their spin number, sign it,
23 print it.

24 Q. Now, who is it that is actually taking
25 the cup, a can of coke -- I don't know if you

1 have soda or anything like that?

2 A. I understand.

3 Q. But if this item were something that
4 the person was purchasing through their
5 commissary account, who would actually be the
6 person that makes the delivery of that item to
7 an inmate, another inmate or somebody on the
8 sheriff's staff?

9 A. A deputy. Somebody on the sheriff's
10 department staff.

11 Q. Okay. Not necessarily a uniformed
12 officer like you, you have people that wear
13 white shirts?

14 A. That's correct.

15 Q. Not the same type of sheriff's
16 department employee as you are; correct?

17 A. Correct.

18 Q. Are individuals that are mentally ill
19 or otherwise suffering from any kind of
20 psychiatric or psychological disorder denied
21 commissary?

22 A. No, they're not. There are certain
23 items that they can't have.

24 Q. And essentially the list of items is
25 prepared by the sheriff's department. There is

1 only so many items that an inmate can choose
2 from in the store, basically?

3 A. Correct.

4 Q. And, if they have sufficient funds in
5 their account to purchase those items, they're
6 allowed to do so?

7 A. They are, up to a certain limit. We
8 have limits.

9 Q. What are the limits?

10 A. We have sixty-five dollar limit or
11 fourteen -- they have fourteen lines on their
12 order form. They can order up to fourteen
13 lines, not over sixty-five dollars.

14 Q. So somebody could order twelve of one
15 thing on one line?

16 A. Right. That's correct.

17 Q. Okay.

18 MR. HILL: Thank you. I have no
19 further questions.

20 MS. ALCALA: No questions.

21 THE COURT: May she be excused?

22 Thank you, deputy. You're free to go.

23 (State's Exhibit 10, State's Exhibit
24 11 marked for identification).

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LUIS PENA

was called as a witness by the State and, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ALCALA:

Q. Can you, please, tell me your name?

A. My name is Luis Pena.

Q. How do you spell your first name?

A. L-u-i-s.

Q. Pena, P-e-n-a?

A. Yes.

Q. Where do you work?

A. I work at the Harris County jail.

Q. What do you do there?

A. I'm a psychologist for the Mental
Health, Mental Retardation Authority.

Q. You are very soft-spoken. It's going
to be hard for us to hear each other.

A. Okay.

Q. I'm sorry, where do you work?

A. I work at the Harris County jail.

Q. What do you do there?

A. I am a psychologist for the Mental
Health Mental Retardation Authority.

Q. So do you work for the jail or for the

1 MHMRA?

2 A. I work for MHMRA.

3 Q. Just so happens you are physically
4 located at the jail?

5 A. That's my duty is to be there at the
6 jail with the inmates.

7 Q. Tell me a little bit about your
8 educational background, high school, college,
9 education.

10 A. Went to Scarborough Senior High
11 School, graduated from there, proceeded to
12 attend the University of St. Thomas. I received
13 my B.A. in psychology, then went to the
14 University of Houston, received my master's in
15 clinical psychology.

16 Q. And do you have any other background,
17 I am sorry, you have a degree in psychology?

18 A. That's correct.

19 Q. From the University of St. Thomas?

20 A. Yes. My B.A.

21 Q. When did you get that?

22 A. I received it in 1985.

23 Q. I'm sorry, I really am having a hard
24 time hearing you.

25 A. In 1985.

1 Q. Since 1985, after you graduated from
2 school, where have you been working?

3 A. I worked for four years at the West
4 Oaks psychiatric hospital, which is a private
5 psychiatric hospital. I was counselor there.
6 Then I did a lot of contract work for different
7 psychologists. Then, after I received my
8 master's degree, I became program director for
9 residential facility for mentally ill. Did that
10 year and a half. Then I started working for the
11 jail.

12 Q. What kind of work did you do for that
13 private psychology clinic?

14 A. I did group therapy and individual
15 therapy, under supervision.

16 Q. Was it any particularized type of
17 therapy?

18 A. This was reality based therapy.

19 Q. You had different patients there?

20 A. Yes, that's correct.

21 Q. Did you do any internships?

22 A. Yes, ma'am.

23 Q. What kind of internship background do
24 you have?

25 A. I did a year internship at the

1 Expressive Therapy Center working with all age
2 groups, children, adolescents, adults, married
3 couples, with different diagnoses, different
4 problems.

5 Q. All right. How long have you worked
6 for MHMRA?

7 A. It will be two years in June.

8 Q. And what kind of work do you do for
9 MHMRA?

10 A. I do psychological assessments,
11 psychological assessments that lead to
12 diagnostic impressions, assisting a treatment
13 team, individual therapy, group therapy, crises
14 intervention.

15 Q. Is it possible to move the microphone
16 at all?

17 A. Okay.

18 Q. I really am having a lot of trouble
19 hearing.

20 Has your full two years been at the
21 jail with MHMRA?

22 A. Yes, it will be two years in June.

23 Q. What do you do with MHMRA? What's
24 your title, counselor, psychologist?

25 A. Psychologist.

1 Q. What do you do as a psychologist who
2 is assigned to the jail?

3 A. I work on a treatment team; and when
4 people come down, they're assessed to see if
5 they are in need of psychiatric services. If a
6 certain inmate is assigned to the team that I am
7 on, I interview the inmate on a weekly basis,
8 speak with them, have a one-to-one session with
9 them on a weekly basis. I do group therapy with
10 other inmates that are in the psychiatric
11 program there. I do psychological assessments,
12 administer assessments, do interpretation and
13 try to come up with a diagnostic impression to
14 assist the treatment team so we can better meet
15 the needs of the inmate.

16 Q. What do you mean by team? First, how
17 many teams are there?

18 A. There are two teams.

19 Q. Okay. And who would be on a team?

20 A. There is a psychiatrist on a team. On
21 my team, there are two psychologists because we
22 have a bigger team. Then there are three
23 caseworkers, an RN, two RN's.

24 Q. Okay. And by team, what does that
25 mean? You talk about a person or a case or

1 what?

2 A. Yes. We meet every Friday, and at
3 this time we assess all the consumers or inmates
4 that were assigned to our team, then we discuss
5 them briefly, see how they're doing, what's
6 going on with them. If someone is in need of
7 special treatment for that day, we bring them
8 in, speak with them, talk with them, we make
9 treatment team decisions, whether somebody
10 should be, you know, moved around to a different
11 cell, whether their medication might need to be
12 increased, whether certain type of therapeutic
13 intervention might work. We also decide whether
14 somebody, you know, might need special services
15 somehow.

16 Q. Okay. Do you know somebody by the
17 name of Gerald Eldridge?

18 A. Yes, ma'am.

19 Q. Have you ever diagnosed people
20 before?

21 A. Yes, I have given diagnostic
22 impressions, yes.

23 Q. Is that what it's called, diagnostic
24 impressions?

25 A. Yes.

1 Q. How many different times have you
2 given a diagnostic impression?

3 A. Hundreds of times. I don't know how
4 many. I wouldn't be able to say, but it has
5 been in the hundreds.

6 Q. Was there a time in your background
7 that that's all you did?

8 A. Yes.

9 Q. Tell me about that.

10 A. When I initially started working for
11 the team, I worked for the screening team, and I
12 interviewed inmates that would be referred to
13 the psychiatric floor, and I would have to meet
14 with them and speak with them and do a mental
15 health status on them and decide whether they
16 were in need of psychiatric services. I would
17 have to give them a diagnostic impression of
18 what I thought might be going on with them. So,
19 that's what I did.

20 Q. So how long did you do that?

21 A. Did that for five to six months, maybe.

22 Q. Okay. So, for those five to six
23 months, if somebody was going to get admitted,
24 so to speak, into your jail MHMRA unit?

25 A. Right.

1 Q. They would have to go through you?

2 A. Yes.

3 Q. Then you would have to decide whether
4 they have mental illness or whether there is
5 nothing wrong with them?

6 A. Well, when I was on screening, that's
7 all I did, I just made that decision to refer
8 them for further treatment. That's all I did.
9 I saw people all day, that's what I did.

10 Q. Those were inmates that you were seeing?

11 A. Yes, ma'am.

12 Q. Were there some inmates that you
13 admitted into the psychiatric unit?

14 A. There were inmates that I referred to
15 be admitted to the psychiatric unit, yes.

16 Q. Were there some inmates that you made
17 the decision that did not need to be admitted
18 into the psychiatric unit?

19 A. Yes, ma'am.

20 Q. So you've done both decisions?

21 A. Yes, ma'am.

22 Q. All right. When did you first, just
23 so we can get a time period, when was the first
24 time that Mr. Gerald Eldridge became known to
25 you, the date?

1 A. I'd have to look at my notes.

2 Q. Okay, that's fine. I know we're
3 talking about a long time.

4 A. January the 7th, 1993.

5 Q. Okay. And when was the last time that
6 you saw Mr. Eldridge?

7 A. January the 10th, 1994.

8 Q. Okay. So you've known him almost
9 exactly a year?

10 A. Yes, ma'am.

11 Q. You had contact with him almost
12 exactly a year, on again, off again?

13 A. Yes, ma'am.

14 Q. Prior to your coming in this room
15 today, I asked you to look at a chart to see if
16 that chart fairly and accurately summarized some
17 of your visits with Mr. Eldridge.

18 A. Yes, ma'am.

19 Q. Did you look at those exhibits?

20 A. Yes, ma'am.

21 Q. Were they fair and accurate to
22 document some of your visits with Mr. Eldridge?

23 A. Yes, ma'am.

24 Q. Let me show you what I've marked as
25 State's Exhibits Nos. 10 and 11. Are these the

1 sheets that you reviewed?

2 A. Yes, ma'am.

3 Q. Okay. Are these sheets fair and
4 accurate as a summary of your involvement with
5 Mr. Eldridge from October the 7th of 1993 up
6 until January the 10th of 1994?

7 A. Yes, ma'am.

8 Q. Okay?

9 MS. ALCALA: At this time, I'd like to
10 tender to Defense Counsel State's Exhibits Nos.
11 10 and 11. Offer them into evidence.

12 MR. HILL: Judge, may I take the
13 witness on voir dire for a moment?

14 THE COURT: Yes, sir.

15

16 VOIR DIRE EXAMINATION

17 BY MR. HILL:

18 Q. Mr. Pena, my name is Wayne Hill. I
19 represent Gerald Eldridge. I attempted to speak
20 with you in the hallway earlier this afternoon?

21 A. That's correct.

22 MS. ALCALA: I object to the
23 relevance. It's outside the scope of this hearing.

24 THE COURT: Overruled.

25 BY MR. HILL:

1 Q. I attempted to speak with you this
2 afternoon about 3:15; correct?

3 A. Yes, sir.

4 Q. At that time you told me you wouldn't
5 speak to me unless this lady gave permission; is
6 that correct?

7 A. No, sir.

8 Q. You're telling me, that when I asked
9 you and I advised you that I was the attorney
10 for Gerald Eldridge, that I would like to speak
11 to you regarding your treatment of him?

12 A. That's correct.

13 Q. You did not indicate, that in the
14 absence of her consent, that you would not speak
15 to me?

16 A. No, sir.

17 MS. ALCALA: I object on the grounds
18 this is cross-examination, which he is entitled
19 to do at some point, but it's not voir dire.

20 THE COURT: Sustained.

21 BY MR. HILL:

22 Q. Are you familiar with the ethical
23 rules of the Texas Board of Examiners for
24 psychologists?

25 MS. ALCALA: Judge, I object again on

1 the same grounds. He is trying to cross examine
2 this witness.

3 MR. HILL: Goes to his qualifications
4 to testify.

5 THE COURT: I understand. You have
6 voir dire. Let's save this for cross
7 examination.

8 MR. HILL: What I am asking if he's
9 familiar with the board's rules about
10 psychological associates testifying in court.

11 THE COURT: What does that have to do
12 with relevancy of this document?

13 MR. HILL: If they're going to try to
14 offer his summary of his meetings, board rules
15 prohibits psychological associate testifying,
16 when a psychologist could come in and testify.
17 I'd like to see if he is familiar with that, if
18 in fact he is a psychological associate as
19 opposed to a psychologist.

20 THE COURT: Members of the jury, will
21 you, please, step back into the jury room.

22 (Jury removed from the courtroom, and
23 the following proceedings continued)

24 BY MR. HILL:

25 Q. Sir, you're a master's level

1 psychologist?

2 A. Yes, sir.

3 Q. You have a certificate from State of
4 Texas from the State Board of Psychologists
5 Examiners?

6 A. No, sir, I do not.

7 Q. Are you exempt from that statute?

8 A. Yes, sir, I am.

9 Q. And are you allowed to hold yourself
10 out as a psychologist?

11 A. Yes, sir, I am.

12 Q. Do you have private practice license?

13 A. Not as a psychologist, no.

14 Q. How does your ability to practice as a
15 psychologist differ from somebody that is a
16 Ph.D. psychologist?

17 A. It differs in that there are some
18 agencies that are exempt. State agencies, some
19 city agencies, school districts, nonprofit
20 organizations are exempt. MHMRA is an exempt
21 agency.

22 Q. Are you as qualified as a Ph.D. to
23 offer testimony in court? In your opinion, are
24 you as qualified as a Ph.D. psychologist?

25 A. Do I think I am as qualified to

1 testify in court for what?

2 Q. Regarding any particular case that
3 you've been a member of the treatment team.

4 A. Yes, sir, if that's the case, I am.

5 Q. Okay.

6 MR. HILL: No further questions.

7 THE COURT: All right. Ready for the
8 jury.

9 MS. ALCALA: Is there an objection to
10 the document or not? Because I'd like to put it
11 up.

12 THE COURT: Hold on a minute, Frank.
13 Any objection?

14 MS. CRAWFORD: We haven't got to look
15 at it yet.

16 MR. HILL: May I ask him a couple of
17 questions with regard to the document?

18 THE COURT: Yes, sir.

19 BY MR. HILL:

20 Q. Mr. Pena, is there another page? Your
21 summary here seems to pick up in October 7th of
22 '93. You indicated that you had met with Mr.
23 Eldridge back on January 7th of '93.

24 A. Yes, sir, that's when he was first
25 admitted to the psychiatric hospital.

1 Q. Well, is part of this summary
2 missing? It picks up on October 7th of '93,
3 nine months later.

4 A. Those notes are from his last
5 admission.

6 Q. So are there any notes from his
7 admission in January?

8 A. That I have, yes.

9 MS. ALCALA: You got them all there.
10 If you want to give me ten minutes, I'll write
11 January, too. It will hurt you more, but if you
12 want it, I'll be glad to do it.

13 MS. CRAWFORD: We just want to see
14 them.

15 MR. HILL: Depends on whether you want
16 to offer it.

17 MS. ALCALA: I'll do it if you want to
18 give me ten minutes.

19 MS. CRAWFORD: We just want to see
20 them, Elsa.

21 MS. ALCALA: All right. He has got
22 them. In fact, I'll put the dates up there.
23 Let me get them.

24 (Off the record).

25 MS. ALCALA: Are State's Exhibits 10

1 and 11 admitted?

2 MR. HILL: No, Your Honor.

3 THE COURT: They'll be admitted.

4 (The jury enters the courtroom)

5 DIRECT EXAMINATION

6 (Continued)

7 BY MS. ALCALA:

8 Q. Sir, what I want to do is go through
9 your different visits with Mr. Eldridge and ask
10 you what it is that you observed when you would
11 see Mr. Eldridge. Where did these visits take
12 place?

13 A. Most of them took place in the dorm.

14 Q. And you would go to him or he would
15 come to you?

16 A. I would go to him.

17 Q. Were there other people around when
18 you would visit him?

19 A. Yes, ma'am, sometimes there were.

20 Q. Who else would be around?

21 A. The other inmates and other staff
22 members.

23 Q. Okay. I want to first talk to you --
24 I think you said that the first time you saw him
25 was on January the 7th of 1993. Did you take

1 notes of your visits with Mr. Eldridge?

2 A. Sometimes I did.

3 Q. What is the purpose in making notes
4 about the visits?

5 A. Just to remember if a specific thing
6 that I thought was important to his, you know,
7 his diagnosis as well as us being able to, you
8 know, provide services to him.

9 Q. Can you pull the microphone up? I
10 know I keep bugging you about it, but I'm really
11 having a lot of trouble hearing.

12 A. All right.

13 Q. Just to clear up something about your
14 licensing. You never testified that you were
15 licensed; is that right?

16 A. That's correct.

17 Q. Okay. Are you licensed?

18 A. No, ma'am.

19 Q. What do you have to do to get
20 licensed?

21 A. Well, to be licensed, you have to have
22 a Ph.D. to be licensed as a psychologist, but
23 MHMRA is an exempt agency.

24 Q. So, if you work for MHMRA, you don't
25 have to be a Ph.D.?

1 A. That's correct.

2 Q. To do your particular job?

3 A. That's correct.

4 Q. Like other people do, to do their
5 particular job?

6 A. If you want to do contract work with
7 them, basically. That's basically private
8 practice.

9 Q. Like Doctor Silverman and Doctor Brown?

10 A. That's correct.

11 Q. Are you going to work on your Ph.D.?

12 A. I haven't decided on that yet.

13 Q. So you haven't made that decision yet?

14 A. That's correct.

15 Q. Do you feel that you're qualified to
16 do your job?

17 A. Yes, ma'am.

18 Q. And does your job description require
19 that you be licensed?

20 A. No, ma'am.

21 Q. What is your job description?

22 A. That I provide diagnostic assessment
23 and provide diagnostic impressions for a
24 treatment team to do individual therapy, group
25 therapy and crisis intervention.

1 Q. During the course of this year -- I
2 think you talked about a team. Were there
3 psychologists besides yourself assigned to the
4 team?

5 A. At the time, the first two times that
6 Gerald was on the unit, I was the only
7 psychologist for that team. When he was there
8 the third time, there was another psychologist,
9 the latter part of that time.

10 Q. What about psychiatrists?

11 A. Well, one psychiatrist.

12 Q. The whole year, there was one
13 psychiatrist?

14 A. Oh, no, no, ma'am. Not that worked
15 with Gerald.

16 Q. Would be one psychiatrist but
17 different people at different courses of time?

18 A. That's correct.

19 Q. Let me talk to you first about January
20 the 27th of 1993. What was noteworthy about
21 that particular visit?

22 A. That he presented himself to be
23 paranoid, when earlier the staff members that
24 were there had shared with me that he did not
25 appear that way earlier when they had spoken to

1 him. Only when I came in and the psychiatrist
2 and rest of the treatment team. But the
3 residential specialties like the guards
4 basically and the nurses had shared with me
5 that's not what they observed with him earlier.

6 Q. How was he acting paranoid with you?

7 A. He was looking around, he wasn't
8 saying he was paranoid, just basically looking
9 around, he didn't want to come out of his cell,
10 his dorm, he was saying, you know, well,
11 actually he wasn't saying anything, just looking
12 around. That's how he looked to be paranoid.

13 Q. What about on January 8th of 1993?

14 A. There was no presentation of that
15 behavior at all.

16 Q. So he was paranoid on the 7th but not
17 paranoid on the 8th?

18 A. That's correct.

19 Q. Behavior wise?

20 A. That's correct.

21 Q. Did you notice anything about his
22 speech on the 7th that might have been different
23 from before?

24 A. Yes, that he was stuttering on the
25 7th. There were days that he would stutter,

1 days he would not stutter.

2 Q. So he was inconsistent with his
3 stuttering?

4 A. That's correct.

5 Q. On January 8th of 1993, how did you
6 describe his behavior that day?

7 A. That he wasn't presenting the paranoid
8 behavior. He was able to come out in the atrium
9 despite that there were other inmates and other
10 staff people in the atrium at the time, without
11 any problems, he came out.

12 Q. Any other observations that you made
13 about his behavior on the 8th of January?

14 A. That he became very tearful.

15 Q. I am sorry, pull the microphone up.

16 A. He became very tearful.

17 Q. Okay. Did the tears seem to be
18 genuine or fake?

19 A. They appeared --

20 Q. Or could you tell?

21 A. At that time, I was still
22 questioning. I really couldn't tell. I
23 suspected that, I had suspicion, I didn't know
24 if maybe it was psychosis or exaggerated
25 symptoms.

1 Q. When was the next time that you saw
2 him?

3 A. Next time I saw him was on January the
4 11th, 1993.

5 Q. What observations did you make at that
6 time?

7 A. There was no stuttering. His only
8 complaints were of having a headache, having
9 stomach problems. There was no, you know, he
10 was cooperative, no management problem. He also
11 said that he speaks to his son and sees his
12 son. He speaks and sees him. Sees him.

13 Q. Then was the next time you saw him on
14 January 13th of 1993?

15 A. That's correct.

16 Q. And what happened at that visit?

17 A. I attempted to administer a
18 psychological assessment to him.

19 Q. Okay. First are you trained to give
20 psychological assessments?

21 A. Yes, ma'am.

22 Q. Tell me about your background and
23 training in giving psychological assessments.

24 A. My training came from when I was at
25 school, the University of Houston, and I

1 administered these tests to students, to
2 children, to people that volunteered to take
3 them. I had a professor who I was under her
4 supervision to do this. She basically was my
5 person who trained me.

6 Q. And she actually observed you giving
7 the tests?

8 A. Yes, ma'am. Sometimes she didn't.
9 Sometimes, not all the time, but sometimes she
10 was.

11 Q. Did you perform satisfactorily in her
12 eyes in giving your tests?

13 A. Yes.

14 Q. Did she grade you in your ability to
15 administer these tests to people?

16 A. Yes.

17 Q. What was the first test you tried to
18 give Mr. Eldridge?

19 A. The M.M.P.I. II.

20 Q. What is that?

21 A. It's Minnesota Multiphasic Personalitiy
22 Inventory, second edition.

23 Q. A second edition; okay.

24 A. It's an assessment containing five
25 hundred seventy items. They're statements that

1 pertain to an individual, help diagnostician
2 provide services to them, tells them about what
3 type of symptoms, what type of problems, what
4 type of disorders somebody might have.

5 Q. Why were you trying to give him this
6 test?

7 A. Because the treatment team wanted to
8 know what was wrong with him, what was going on
9 with him.

10 Q. At that point, did you have an idea in
11 your mind about what was wrong with him?

12 A. It was still questionable. There was
13 still, you know, it was between maybe a
14 psychotic disorder and malingering.

15 Q. So you weren't sure at that point?

16 A. Weren't sure at that point.

17 Q. And how is it that a test could help
18 you get sure?

19 A. Well, this particular assessment tells
20 us whether somebody is experiencing psychotic
21 symptoms, depression, anxiety. Also lets us
22 know whether this might be exaggerating their
23 symptoms.

24 Q. What happened when you tried to give
25 him the test?

1 A. When I tried to give him the test, he
2 he said he couldn't read.

3 Q. Can you give that test to somebody
4 that cannot read?

5 A. No, ma'am.

6 Q. Did you take him at face value when he
7 said that he could not read?

8 A. I was suspicious.

9 Q. Why were you suspicious?

10 A. Because, when I had spoken with him in
11 the past, his thought processes were clear,
12 organized. He didn't give me the impression
13 that he was somebody who might not be
14 functioning at a level that where they can take
15 this assessment. This assessment is given at
16 eighth grade level.

17 Q. So, seems bright enough to be at an
18 eighth grade level?

19 A. Yes, ma'am.

20 Q. So did you try something else when he
21 told you he could not read?

22 A. Yes.

23 Q. What did you do?

24 A. I tried the Bender-Gestalt, which is
25 an assessment to rule out whether somebody has

1 an organic disorder, which is something that
2 comes, you know, from a car accident or
3 basically head injuries, car accidents. And
4 it's a visual test that they just draw circles
5 or lines, and, you know, you can tell whether
6 somebody has a disorder that was caused from an
7 external force just by their coordination. And
8 it doesn't require any reading, just requires
9 somebody being able to see and draw the items.
10 He completed the first item, then he said that
11 he needed his glasses, that he couldn't
12 continue. And he completed that first item on
13 the second attempt without any distortion all.

14 Q. First, are you trained to give that
15 test?

16 A. Yes, ma'am.

17 Q. And is it the same type of training
18 that you got to do the M.M.P.I.?

19 A. Yes, ma'am.

20 Q. Secondly, you said that he actually
21 did the first what is it a figure of that test?

22 A. Yes, ma'am.

23 Q. All right. And he could see well
24 enough to do that?

25 A. Yes, ma'am.

1 Q. But then, when you tried to give him
2 the second figure, he couldn't see?

3 A. He said he needed his glasses.

4 Q. So then what did you do?

5 A. So I attempted to administer an oral
6 assessment, which he doesn't need to know how to
7 read, doesn't need to have good eyesight, just
8 needs to answer yes or no.

9 Q. So what happened?

10 A. He became -- just said he couldn't
11 answer, that he needed to talk to his brother
12 Barry, that Barry knew all the good answers,
13 that he could not give me a direct yes or no to
14 my questions.

15 Q. At that point, what did you do?

16 A. At that point, I couldn't go further
17 as far as assessing him, as far as trying to
18 administer him some type of psychological
19 assessment.

20 Q. So you didn't complete any of the test
21 on him?

22 A. That's correct.

23 Q. Was the next time you saw him was
24 January 14th of 1993? No, actually, was he
25 discharged on January 14th, 1993, from the

1 psychiatric unit?

2 A. Yes, he was.

3 Q. So you did not see him that day?

4 A. That's correct.

5 Q. Okay. Do you know when he was
6 admitted into the psychiatric unit?

7 A. This particular time?

8 Q. Right.

9 A. Was January, well, I saw him on the
10 7th, so it was either on the 7th or shortly
11 before that.

12 Q. Maybe the evening of the 6th?

13 A. The evening or two days at the most
14 before.

15 Q. So he was in there from the 7th of
16 January to the 14th of January?

17 A. That's correct.

18 Q. He was discharged?

19 A. That's correct.

20 Q. Do you know what diagnosis he was
21 discharged with?

22 A. I believe it was malingering.

23 Q. Okay. When was the next time that you
24 saw Mr. Eldridge?

25 A. On February the 26th, 1993.

1 Q. All right. Was that a re-admission
2 into the psychiatric unit?

3 A. Yes, it was.

4 Q. Do you know the date of that admission
5 into the psychiatric unit?

6 A. No. No.

7 Q. Okay. Do you want to look at the
8 records to see if it was shortly--

9 A. I know it was shortly before I saw
10 him. Can I see the records? Well, actually it
11 might be here.

12 Q. Just go through it, see if you can see
13 it.

14 A. I'm looking for the physician's
15 admission note.

16 Q. If you can't find it, that's all
17 right.

18 A. No.

19 Q. Takes too much time to look through
20 it, okay. We'll not worry about it. All
21 right. But you saw him February 26th, 1993?

22 A. That's correct.

23 Q. Is it the same team? Like if they got
24 discharged, then re-admitted, would he go back
25 to you?

1 A. Yes.

2 Q. Or would he go to another team?

3 A. He would go back to the team that he
4 left when he went to the general population.

5 Q. So, if you saw him on the 26th, you
6 would have been the person to see him?

7 A. That's correct. Yeah.

8 Q. Okay. What happened on the 26th?
9 What did you notice?

10 A. He was very vague, he didn't give
11 clear, direct answers, stutter-like speech, and,
12 again, the residential specialists reported
13 there was no management problem at that time.
14 And earlier, before that, he was moved back to a
15 certain tank because of a physical altercation
16 with another consumer.

17 Q. Consumer is another word for inmate?

18 A. Yes.

19 Q. Or patient, I guess, to you?

20 A. Yes.

21 Q. When was the next time that you saw
22 him?

23 A. On March the 2nd, 1993.

24 Q. What happened at that time?

25 A. He was very clear, his thought

1 processes were organized, they were goal
2 directed, he was able to share with me some of
3 his childhood experiences, and I was able to
4 complete his case formulation basic.

5 Q. What do you mean complete case
6 formulation?

7 A. Basic social history, I was able to do
8 that. He was cooperative, his thoughts were
9 very clear. I was able to do that.

10 Q. And then when was the next time that
11 you saw him?

12 A. Next time I saw him was October the
13 6th of 1993.

14 Q. And what happened at that time?

15 A. I'm sorry, October 7th.

16 Q. Okay, I am sorry, we just jumped.

17 A. He was discharged again to the general
18 population, remained in general population until
19 October.

20 Q. So he went in about February the 26th?

21 A. That's correct.

22 Q. He was discharged March the third,
23 1993?

24 A. Yes. Somewhere along in there.

25 Q. About a week, I guess. A little less

1 than a week?

2 A. That's correct.

3 Q. Do you know what diagnosis he was
4 discharged with?

5 A. Malingering.

6 Q. So now he has been discharged twice
7 with malingering from the psychiatric unit.
8 When he is discharged from that unit, do you
9 yourself make that decision?

10 A. No, it's a decision of the treatment
11 team, the psychiatrists, myself, the
12 caseworkers, the R.N.'s and the residential
13 specialists.

14 Q. So, back on the first discharge, do
15 you know what other people were on the team at
16 that time?

17 A. Yes, I do.

18 Q. Who was that?

19 A. The first time, it was Doctor Arfa,
20 Clarence Geraldts, I believe it was Joyce
21 Dempsey, two caseworkers and the R.N., I think
22 it was Ms. Callahan, I believe.

23 Q. Okay. And, for example, Doctor Arfa,
24 does he just rely on what you write down, or
25 does he do his own visits with the defendant?